Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to Sections 74.1203(a)(3) and	)	
74.1204(f) of the Commission's Rules	)	RM-11786
Aztec Capital Partners, Inc PRM	)	
Re-balancing FM Translator Interference Rules	)	
	)	

Comments of Kyle Magrill

I. INTRODUCTION

Aztec Capital Partners, Inc (Aztec), has asked the Commission to re-balance specific rules by affording protection for certain types of FM translators against complaints of actual or predicted interference outside of the protected contours of "affected" stations. The Aztec proposal would afford protection against interference complaints directed at Fill-In translators that create interference outside of the protected contour of a complaining station.

As a licensee that has been affected by complaints of alleged interference occurring well outside of a station's protected contour, I fully support Aztec's proposed rule making. The ability of a distant station to cripple or destroy an FM translator that is providing a local service is an abuse of rules and perversion of the intention of the rules. This situation needs to be addressed by the Commission. I further submit that the need for any translator to protect a full service station beyond the protected contour, is an anachronism who's time has largely passed. Certainly, in rated markets, the variety of potential local signals and formats that have become available in the past three decades makes reception of distant signals unnecessary. True distant signal listening (as in listening to true out of market signals) is now relegated to

nothing more than a hobby for a very few enthusiasts. The Commission may do well to consider if non-fill-in translators should also be protected from displacement in rated markets where there is no longer a need for distant signal reception to fulfill a missing format and there may also be no viable way to receive distant FM signals.

The Context of the Aztec Proposal

It is time to consider the current context of the increasingly important role FM translators play in enhancing the service of local AM stations as well as providing an analog outlet for HD broadcasts. This role has evolved over time and allows local broadcasters to better serve their communities. As local services grow, the need for distant services diminishes because the local services tend to duplicate successful distant signals. Even networked broadcasts originating from a nearby AM station or HD signal are distinctly more local and better than a distant signal. A local signal, even originating from a network or automated station will have local content in the form of commercials and PSAs as well as local emergency alerts. It may also have local public affairs programming. The point is that any translator serving as a fill-in for a local signal is superior to an out of market distant signal.

Finally, the translator signal is more easily received than a distant signal. In past decades, it was easier to receive a distant signal because ambient noise was lower. Today FM signals face many of the same obstacles that AM stations are facing. Being of local origin overcomes some of those reception barriers that make it difficult or impossible to reliably pick up a distant signal. Even a non-fill-in translator carrying a distant signal is probably a better choice than an actual distant signal because the translator is still more easily received.

The problem that Aztec is facing is that the existing rules treat all translators as purveyors of distant signals which puts them on par with actual distant signals, except that as secondary services the distant signal is considered superior. This is not the true condition of most translators on the air today. The majority of FM translators are providing local signal outlets to their communities and this number is increasing. My company has most of its translators being used by AM stations, but we have at least one HD signal being rebroadcast and it is also produced locally in its market.

A major problem is the distant full service stations can easily displace local translator services by soliciting interference complaints by a small group of people. This results in lost local service as well as forcing listeners to tune into weaker distant signals over stronger local signals. The Commission would be serving the public interest by preventing a distant station from terminating a local service. By preserving the local service, a better and more robust signal is retained and the listeners are able to receive broadcasts that are actually relevant to the local community. It is perverse for a distant station to force a signal providing local service off the air and the rules should be modernized to prevent this outcome.

A. Evolution of the Role of FM Translators

When the FM translator rules were adopted in 1970, AM broadcasting was the dominant medium in the United States. At the time, there were only around 2500[1] FM stations in the USA. In that same year, there were around 4300 AM stations. A substantial portion of those FM stations were simulcasting AM sister stations or were programming niche formats. FM

[1] Source: Statistical Abstract of the United States, R93-105, 1970 edition

receivers were still uncommon and were considerably more expensive than AM receivers. Very few FM stations garnered significant audience ratings. Today, the number of full powered FM stations has more that quadrupled to approximately 10,700, while the number of AM stations has increased very little to only about 4700[2]. In addition to the full powered stations, there are more than 6000 translators and around 1000 LPFM stations authorized. The total number of FM signals nationwide is closing in on 20,000. FM broadcasting is, and has been for many years, the dominant radio medium in most communities.

In 1970, FM translators were primarily envisioned as a way to bring distant signals into remote communities, as TV translators had done starting in 1963. Although the original rules required only protection of other station's service contours, the rules were subsequently revised to disallow any interference to any received station. Since the most common purpose of a translator of that era was to bring distant signals into remote communities, it was logical that a translator bringing in one distant signal should not be permitted to interfere with any other distant signal already being received in that community. This made sense in the original intended use. There was no reason to favor one distant signal being received via a translator over another distant signal being received directly. Given the relative scarcity of FM signals of the day, preventing interference to any signal was clearly in the public's interest. Since there were so many available channels for translators in those days, there really was no reason to interfere with another signal except, possibly in a few of the most congested cities. This was mainly still the case in 1990 when the rules were updated and became more restrictive. Today the situation is markedly different. The FM band has exploded with signals over the past 45 years. In virtually every urbanized area, there are literally dozens, if not scores, of

[2] Source: http://www.fcc.gov/document/broadcast-station-totals-december-31-2014 , accessed 3-15-2015

available signals, but very little available spectrum remains in many markets. Formats are now heavily duplicated by local stations in all major cities. Formats heard in one city are almost always heard in other cities with similar size and ethnic composition. Often, when a distant signal is strong enough to be received, it simply shares a preset on the radio along with local stations playing the same format. It is hard to imagine a case, in a top 100 market, where a distant signal would be so unique so as to compel listeners to tune to a weak, out of market signal. Rather, a local station would be more inclined to change formats if there was significant demand for some unavailable format.

Within the last few years, the FCC has begun authorizing translators to be "fill-in" services for AM and HD multi-channel radio stations. In this new capacity, many translators are no longer bringing distant signals into a community. Instead, they are used to rebroadcast a LOCAL signal to the public on an FM frequency. These fill-in translators have become the primary source for local news, entertainment and community information for many listeners. Unfortunately, the rules have not yet been modernized to keep up with the vital role that FM translators now play. We have seen that translators, serving hundreds of thousands of people with local programming can be permanently forced off the air by a distant station, if that station can find a few, or even one, fringe listener that is no longer able to receive that station as a result of the translator's operation. Since most of the fringe signal listening is mobile, an affected listener may be one that lives closer to the affected station but drives a considerable distance to another market on a daily basis and happens to encounter interference from a translator operating in that distant city. Should a listener that happens to drive into a translator's interference zone for a few minutes each day be in a position to force the translator off the air and deny service to the community? The present rule would seem to say 'yes'.

Although this scenario seems unlikely, it happens. Two listeners that complained about one of CircuitWerkes, Inc's translators did exactly that. The fact that the distant station's signal was, itself, too weak to be received in many places didn't stop the listener's perception that the translator was interfering with the distant station's perception. Simply put, the listener expected to hear their station and when they heard another, they blamed the translator despite the fact that their station could not even be detected when the translator was turned off. Listener perceptions can be, and often are, wrong. Using rules that rely on them is, well, unreliable.

Even when bona-fide interference exists, translators costing many tens of thousands of dollars to build are simply forced off the air as a result of insignificant numbers of complaints, leaving the population that they formerly served with only a very weak, non-local signal in their place. This situation cannot benefit the public.

FCC rule 47 CFR § 74.1203(a)(3), as interpreted up till now, has become very contrary to the public interest because the rule does not draw any distinction between a fill in translator providing local service and a non-fill-in bringing in a distant signal. Since so many translators are now local fill-ins, the rule is now being misused to strongly favor distant signals over local signals. This rule might also favor the larger broadcasters by allowing the corporate entities that typically own the more powerful stations to suppress locally owned facilities. In this regard, I believe that this rule is unintentionally restraining trade by allowing distant, corporately owned, stations to silence smaller local ones.

Another problem is that interference is tied to a particular station's format. A translator that is unacceptable today would almost certainly be perfectly acceptable tomorrow if the affected station changes formats or if there is a single affected listener that moves. Possibly even changing a single personality or show on a station will be enough for listeners to move on[3]. Ultimately, 47 CFR § 74.1203(a)(3), while intended to be a technical rule, is actually completely dependent upon the particular format that an affected station happens to play. Since radio stations change personalities, shows and formats regularly, any test that relies solely, or partially, upon listenership is capricious and arbitrary because the FCC does not control how or when a station changes its format. Very few stations retain the same format and staff for many years, though there are certainly many notable exceptions. However, even the exceptions point to the same arbitrary flaw. A translator that is unfortunate enough to land near a station with a popular and longstanding format would be unacceptable while the same translator placed near an identical affected signal playing a different format would have no problems. Because the results are arbitrary, there is no quantifiable way to know in advance if there will be complaints.

Further, this reliance on formats and statistically insignificant numbers of listeners results in disproportionate results that cannot be in the public interest. In other words, a few listeners of a distant signal can prevent local service to thousands or hundreds of thousands of listeners. The severity of the rule further belies the abundance of signals available to most listeners

[3]In the e-mails of the Interference Complaint of WCHZ License, LLC. vs. W231CT, almost all of the complaints were about the "Freak Show" that airs in morning drive of WLLD, not about WLLD or even the format. See section C of this document When queried, we found that they also listened to similar formatted stations in Orlando and were simply pushing preset buttons during their morning drives. Most did not report listening to WLLD during other dayparts except for one afternoon drive listener. All listening was mobile.

today. The need to protect distant signals is simply far less important today, now that the FM band has matured.

In 2013, as part of a Notice of Proposed Rulemaking on AM radio Improvement (DA 13-249), several comments from individuals and organizations were received asking that 47 CFR § 74.1203, should be modified to be more consistent with interference standards for other classes of stations or to afford displacement protections to fill-in translators[4]. RM-11786 is a natural outgrowth that shows the need for a modification of the rules.

B. Significant Number of Complaints Standard

An alternative to rules changes would be to apply the "significant number of complaints" standard. In 1990, the FCC considered applying the "significant number of complaints" standard for determining interference to direct public reception. At the time, they decided against adding that standard to the rules. However, the Commission reserved the judgment to determine the validity of uncorrected interference complaints based on the individual circumstances of the case. This leaves open the possibility that the "Significant numbers of complaints" standard can still be applied to specific cases, as was noted in the 'Forus FM Broadcasting' case of 1992[5]. The current situation is a case where application of this standard would be appropriate and in the public interest.

In 1992, the Commission stated that "The judgment to determine the validity of uncorrected interference complaint or complaints would be dependent upon the individual circumstances

[4] See comments filed in FCC proceeding DA 13-249
[5] See *Forus FM Broadcasting of New York, Inc*, 7 FCC Rcd No. 25 (1992)

presented in each case. Therefore a question can be raised as to whether the 'significant number of complaints' standard still applies"…[6]. If the significant number of complaints standard can still be considered, or reconsidered, then a mechanism to address this situation is possible.

Requiring a significant number of complaints and a reasonably acceptable signal level necessary to effectuate "regular listening" would not change the secondary status of translators, but would bring them inline with their more important role of today along with the much less important role played by distant signals. Additionally, based on predicted or measured signal strength in the affected areas, the Commission can determine if a signal can be reasonably considered reliable enough for regular listening by reasonable disinterested parties. Either of these criteria can be used to make a determination of no interference. This process would avoid elevating any translators to the same level as primary stations. Translators would still have to protect primary stations with acceptable signals and a reasonable number of listeners. However, I believe that the public interest, convenience and necessity would be well served by modifying the rules to protect fill-in translators because that will allow local signals to continue serving their communities rather than distant signals of poor quality. I would suggest that the test of a significant number of complaints be some ratio of the number of bona-fide affected listeners vs the number of listeners that will receive service from the translator. At the very least, the number must be greater than a handful of listeners. For example, silencing a signal providing local content to 400,000 people to accommodate a dozen listeners of a distant signal cannot be in keeping with the localism initiatives of the FCC. If the number of affected listeners reaches into the hundreds, then it's

[6]While the Forus case applied specifically to an FM booster, generally both are covered by the same set of rules and decisions affecting boosters normally also apply to translators and vice-versa.

easier to make a reasonable argument that they should be protected. Further, even if significant numbers of listeners are affected, it's perfectly reasonable to provide absolute distance or signal strength limits on complaints. By doing so, translators would be protected from complaints originating below a signal strength deemed to be unreliable or not useful to most listeners. An absolute limit on distance would be another option that could limit how far an interference complaint can be accepted. Earlier in these comments, I mentioned a situation where listeners that drive from an area without interference into an area where there is interference were complaining, even though the affected signal was too weak to be reliably received in the areas affected by the translator. It is also very possible that a person who lives in City A but commutes to City B might complain about interference in City B from a local translator in City B, far beyond the service contour of the affected station. Is the public's interest being served by forcing the City B translator off the air to accommodate the listener from City A? What about the people in City B that have lost a strong local signal to a weak, distant signal? Many of those people in City B probably can't pick up the signal from the station in City A. Is depriving these people of service in the public's interest. or would the public interest best be served by having a strong local signal available?

C. Local Service Should not be Terminated Due to Strict Adherence to 47 CFR § 74.1203 Outside of the Affected Station's Protected Contour.

In 2015, Tampa area radio station WLLD, owned by Beasley, attempted to silence Orlando area translator W231CT, owned by CircuitWerkes, Inc.. W231CT is licensed to Orlando, served around 400,000 people and was acting as the FM outlet for WRSO, an Orlando area AM station. WLLD is licensed to Lakeland, FL, but they transmit from a tower far inside of the Tampa market. WLLD exclusively positions itself as a Tampa area station and their

tower is about 125km from the Orlando market. They have a weak signal in Orlando which is far beyond their predicted service contour. They do not have any local presence in Orlando. WLLD's urban contemporary format is not unique to the Orlando market. There are at least two other rated Orlando FM stations playing the same format[7]. WLLD listeners were asked about their listening habits and we found that they also listen to the other Orlando area stations playing similar formats. WLLD is simply one of the buttons on their car radios as they punch around the dial on their morning commutes. WLLD has no studios, offices or staff in the Orlando area. They do not show up in the Orlando ratings and they don't even sell any commercials to Orlando area businesses. They play no public service announcements for Orlando and produce no public affairs programs for Orlando. There is absolutely nothing about WLLD that serves Orlando. In comparison, WRSO maintained staffed local studios, originates several hours of local programming daily, sells commercials exclusively to local Orlando area businesses, airs local public service announcements and participates in Orlando area non-profit and community events. WRSO identifies with and is integrated into the Orlando market. WRSO operates with 20kW during the daytime hours, but reduces power to 400Watts at night, leaving a large part of the community un-served after dark. W231CT provided coverage to about 400,000 potential listeners mostly in areas that WRSO cannot reach at night. Because of the complaints from WLLD, on behalf of six part-time listeners, W231CT was forced to move from its central Orlando location to a site over 15 km further away. In the process, coverage was lost to several hundred thousands of people. Effectively, this action sacrificed the local service of WRSO for the distinctly un-local service of WLLD.

[7] See Appendix A, format and ratings information derived from Nielsen for Tampa and Orlando markets.

Additionally, translators face a unique problem. Any change to an existing translator, even one that would reduce interference can be grounds for a complaint. An unscrupulous person can claim that new interference was created where no change, or a reduction of interference, actually occurred. As a result, owners must think twice about making any changes to a licensed translator. If a translator was previously found to be causing no interference but it made any sort of change, any of the previously unaffected listeners could claim new interference and start the process over again. Translators need relief from this sort of harassment.

I respectfully request, in light of the public interest benefit from having strong *local* signals over weak *distant* signals, that the FCC grant RM-11786 as both necessary to promote localism and to provide relief to small translator owners from outdated policies and rules that are detrimental to broadcasting and the public.

Respectfully Submitted.

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Appendix A

WLLD format and performance information:

WLLD-FM is listed as a "Rhythmic CHR" according to Nielsen. The average 12+ rating in Tampa since December is a 4.9.

Orlando area stations with similar formats are:
WPYO, a Rhythmic CHR with an average rating of 4.85,
WCFB, an Urban AC with an average rating of 5.375,
WJHM, listed as CHR (heavy emphasis on rhythmic/urban), with an average 12+ of 3.1 and
WPOZ-HD2 (with FM translator W 240BV) a Rhythmic CHR alternative (average 12+ rating of 0.33).

WLLD is not listed in the Orlando 12+ ratings.

Source: Nielsen Audio Ratings from radio-online.com.